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UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
HELENA DIVISION

BOB BROWN; HAILEY SINOFF;
and DONALD SEIFERT,

Plaintiffs,

vs.

CHRISTI JACOBSEN, in her
official capacity as Montana
Secretary of State,

Defendant.

Cause No.
6:21-cv-92-PJW-DWM-BMM

**Joint Proposed Findings of
Fact**

Pursuant to the Court's Order of January 13, 2022, the parties respectfully offer the following jointly proposed Findings of Fact. The parties are unable to agree on any proposed Conclusions of Law.

FINDINGS OF FACT

Parties

1. Plaintiff Bob Brown is a resident of Flathead County, which falls within the Public Service Commission (“Commission”) District 5. Plaintiff Brown intends to vote in the 2022 election for District 5 Commissioner. (Doc. 33 at 3.)

2. Plaintiff Hailey Sinoff is a resident of Gallatin County, which falls within Commission District 3. Plaintiff Sinoff is not currently eligible to vote for a Public Service Commissioner in 2022. Plaintiff Sinoff is scheduled to vote for a Commissioner in 2024. (Doc. 33 at 3.)

3. Plaintiff Donald Seifert is a resident of Gallatin County, which falls within Commission District 3. Plaintiff Seifert is not currently eligible to vote for a Public Service Commissioner in 2022. Plaintiff Seifert is scheduled to vote for a Commissioner in 2024. (Doc. 33 at 3-4.)

4. Defendant Christi Jacobsen is the Montana Secretary of State. The Secretary of State's office is in Lewis and Clark County, Montana. (Doc. 33 at 4.)

Public Service Commission

5. The Montana Public Service Commission is a state executive branch agency and the head of the department of public service regulation. (Doc. 33 at 4.)

6. The Commission generally regulates certain utilities, motor carriers, and pipelines. The Commission possesses rulemaking, rate setting, investigatory, and quasi-judicial authority to carry out its regulatory function. (Doc. 33 at 4.)

7. The Commission consists of five commissioners. Montana statute defines five geographic districts, based on county boundaries, and provides that one commissioner shall be elected from each district. (Doc. 33 at 4.)

8. The districts are currently defined as:

- a. first district: Blaine, Cascade, Chouteau, Daniels, Dawson, Fergus, Garfield, Hill, Judith Basin, Liberty, McCone,

Petroleum, Phillips, Richland, Roosevelt, Sheridan, Toole, Valley, and Wibaux Counties;

- b. second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Treasure, and Yellowstone Counties;
- c. third district: Beaverhead, Broadwater, Deer Lodge, Gallatin, Golden Valley, Jefferson, Madison, Meagher, Musselshell, Park, Silver Bow, Stillwater, Sweet Grass, and Wheatland Counties;
- d. fourth district: Granite, Lincoln, Mineral, Missoula, Powell, Ravalli, and Sanders Counties;
- e. fifth district: Flathead, Glacier, Lake, Lewis and Clark, Pondera, and Teton Counties.

(Doc. 33 at 4–5.)

9. The current Commission districts were created in statute by the Montana Legislature in 2003. (Doc. 33 at 5.)

2021 Montana Legislature and 2020 Census

10. The 2021 Montana Legislature adjourned on April 29, 2021. (Doc. 33 at 5.)

11. The United States Census Bureau released its 2020 Census data to the states on August 12, 2021. (Doc. 33 at 5.)

United States Census Data

12. Decennial censuses have been conducted twice since 2003—once in 2010, and again in 2020. (Doc. 33 at 5.)

14. As of the 2020 Census, Montana's total population is 1,084,225. (Doc. 33 at 5.)

15. As of the 2020 Census, the ideal Commission district population is 216,845. (Doc. 33 at 5.)

16. As of the 2020 Census, the population of District 1 is 186,616. (Doc. 33 at 6.)

17. As of the 2020 Census, the population of District 2 is 216,532. (Doc. 33 at 6.)

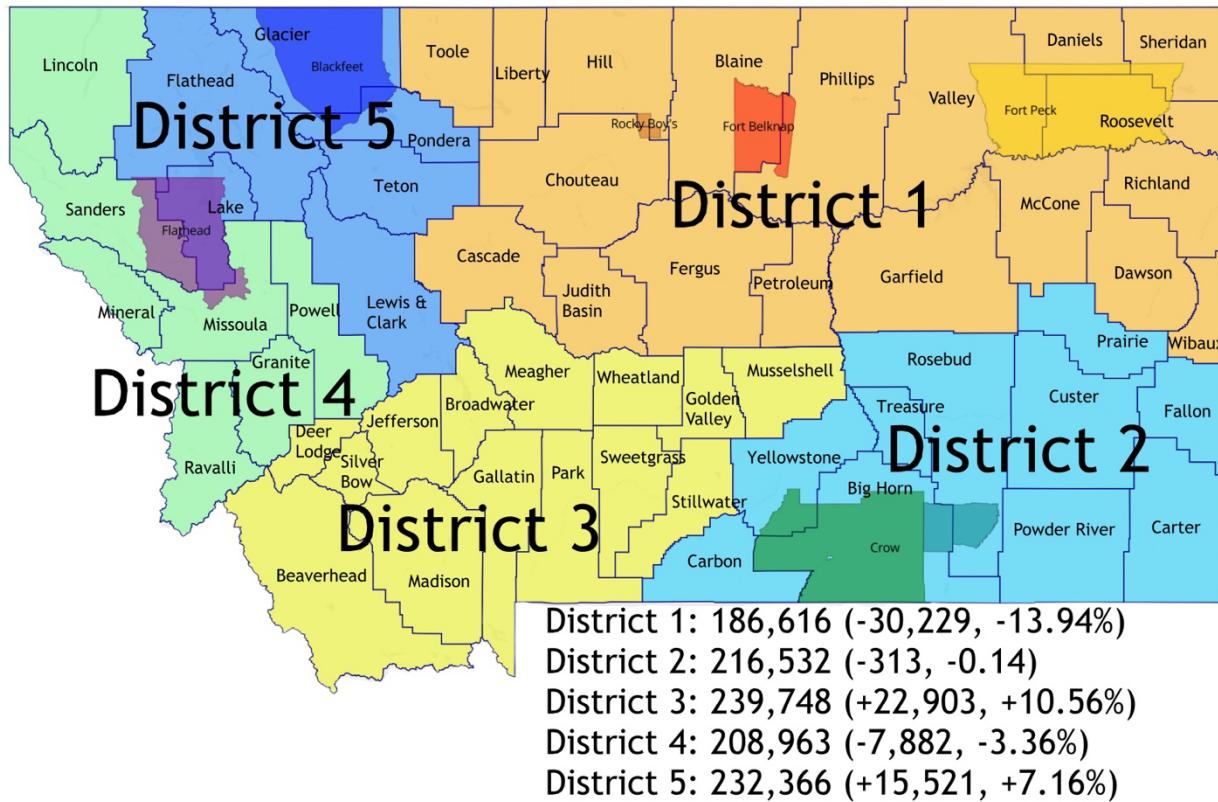
18. As of the 2020 Census, the population of District 3 is 239,748. (Doc. 33 at 6.)

19. As of the 2020 Census, the population of District 4 is 208,963. (Doc. 33 at 6.)

20. As of the 2020 Census, the population of District 5 is 232,366. (Doc. 33 at 6.)

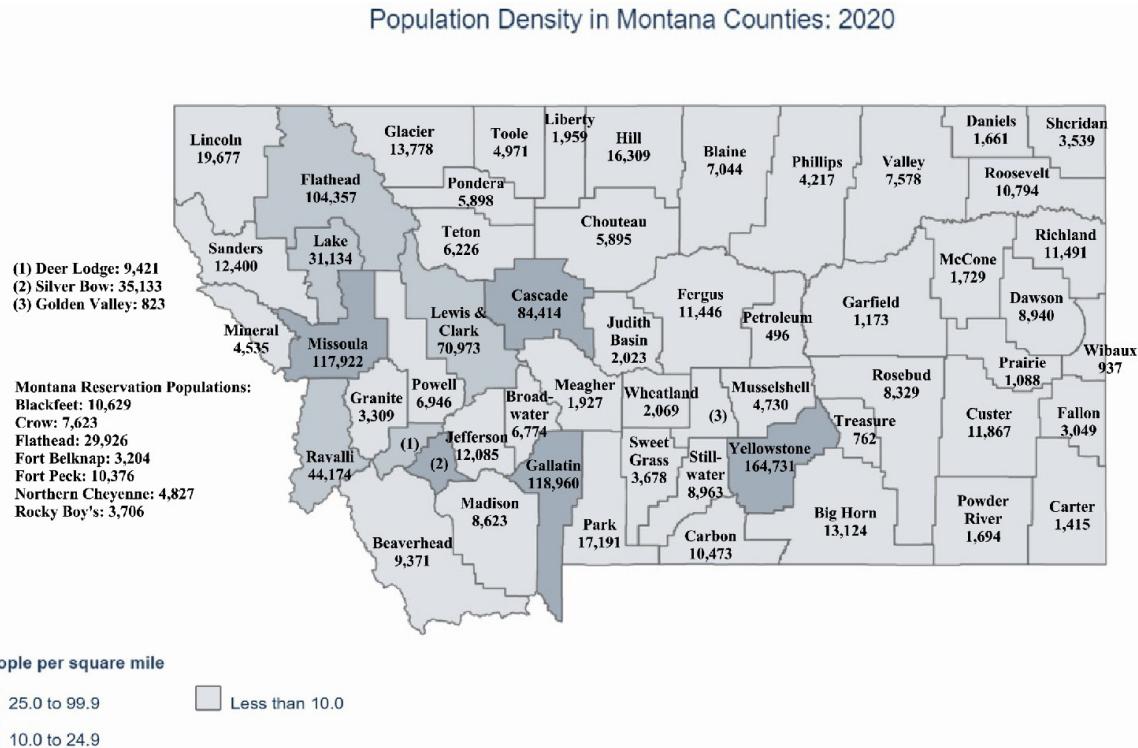
21. If measured by the 2020 Census, the current maximum population deviation is 24.5%. This figure was determined by calculating the difference in deviation from ideal between District 1 (-13.94%) and District 3 (+10.56%). (Doc. 33 at 6.)

22. The following map accurately shows the current PSC district boundaries and population figures:



(Doc. 33 at 7.)

23. The following map accurately shows the population of each Montana county as of the 2020 Census:



(Doc. 33 at 7.)

24. The parties have accurately represented the population figures for all proposed maps. (Doc. 33 at 7.)

25. Davesredistricting.com is an appropriate source for creating maps using 2020 United States Census data. The parties' proposed maps are available at the following urls:

a. Plaintiffs' Proposed Map 1:

<https://davesredistricting.org/join/c27c6808-8a40-4f91-8732-b52c28c1ef85>

b. Plaintiffs' Proposed Map 2:

<https://davesredistricting.org/join/e84d16bd-337b-4904-94e9-445996c594a9>

c. Plaintiffs' Proposed Map 3:

<https://davesredistricting.org/join/8f7e81f5-31fa-45c1-8e3b-b78cc5875436>

d. Defendant's Proposed Map:

<https://davesredistricting.org/maps#viewmap::c4d36266-6f69-4bad-a0fd-a316bcc10f09>

(Doc. 33 at 7-8.)

26. Population figures appearing on Davesredistricting.com, including those generated by the website to analyze the parties' maps, are accurate. (Doc. 33 at 8.)

27. The population figures for those precincts split from the remainder of the counties in Plaintiffs' proposed maps are as follows:

- a. Flathead County, Precinct 24 (1,419) (remaining county population is 102,938).
- b. Missoula County, Evaro (1,183) (remaining county population is 116,739).

- c. Pondera County, Heart Butte (775), Valier (530), Valier Rural (749) (remaining county population is 3,844).
- d. Sanders County, Dixon (514), Hot Springs (1,461) (remaining county population is 10,425).

(Doc. 33 at 8–9.)

Defendant Secretary of State Christi Jacobsen

- 28. Defendant Christi Jacobsen has no authority to draw or approve PSC districts. (Doc. 33 at 9.)
- 29. The State of Montana and the Montana Legislature are not named parties in this litigation. (Doc. 33 at 9.)
- 30. Amending Montana Code Annotated § 69-1-104 requires an act of the Montana Legislature. (Doc. 33 at 9.)
- 31. Defendant Christi Jacobsen cannot amend Montana Code Annotated § 69-1-104. (Doc. 33 at 9.)

Respectfully submitted this 28th day of February, 2021.

/s/ Constance Van Kley
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